

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 SELUNDO CHILIPE-ESCANDON,

13 Defendant.

CASE NO. CR19-0109-JCC

ORDER

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15 This matter comes before the Court on Defendant Selundo Chilipe-Escandon's motion
16 for compassionate release (Dkt. No. 20), the Government's motion for leave to file an over-
17 length brief (Dkt. No. 22), and the Government's motion to seal (Dkt. No. 24). Having
18 thoroughly considered the parties' briefing and the relevant record, the Court hereby GRANTS
19 the Government's motions (Dkt. Nos. 22, 24) and DENIES Mr. Chilipe-Escandon's motion for
20 compassionate release as moot for the reasons explained herein.

21 **I. BACKGROUND**

22 In 2012, Mr. Chilipe-Escandon pleaded guilty to conspiracy to distribute controlled
23 substances and the Court sentenced him to 60 months in prison followed by a term of supervised
24 release. *See United States v. Chilipe-Escandon*, Case No. CR12-0047-JCC, Dkt. No. 742 (W.D.
25 Wash. 2012). Mr. Chilipe-Escandon was deported after completing his 60-month sentence but
26 returned to the United States and was charged under this case number with possession of heroin

1 with intent to distribute. (Dkt. No. 1.) He pleaded guilty to the crime and also admitted to
 2 violating the conditions of his supervised release. (Dkt. Nos. 6, 10); *United States v. Chilipe-*
 3 *Escandon*, Case No. CR12-0047-JCC, Dkt. No. 1151 (W.D. Wash. 2019). The Court imposed 15
 4 months of confinement for the supervised release violations and 24 months for the new drug
 5 offense, with the terms of confinement to run concurrently. (Dkt. No. 17); *United States v.*
 6 *Chilipe-Escandon*, Case No. CR12-0047-JCC, Dkt. No. 1152 (W.D. Wash. 2019).

7 Mr. Chilipe-Escandon, while confined at FCI-Herlong, filed the instant motion for
 8 compassionate release with approximately seven weeks left of his term of imprisonment. (Dkt.
 9 No. 20 at 2 (noting a release date of December 22, 2022).) He asked the Court to reduce his
 10 sentence to time served based on his diagnosis of cardiomegaly, *i.e.*, an enlarged heart, arguing
 11 that this condition places him at an increased risk of complications should he contract COVID-19
 12 in prison. (*Id.* at 6.) He has now finished serving his term of imprisonment and been released.

13 II. DISCUSSION

14 A. Motions for Leave to File an Overlength Brief and to Seal

15 As a preliminary matter, the Government moved to file a 13-page opposition to the
 16 motion for compassionate release. (Dkt. No. 22.) The Court FINDS that a response brief of this
 17 length is reasonable under the circumstances and GRANTS the motion.

18 The Government also moved to maintain under seal exhibits containing Mr. Chilipe-
 19 Escandon's medical records (Dkt. No 24). The Court starts from the position that “[t]here is a
 20 strong presumption of public access to [its] files.” W.D. Wash. Local Civ. R. 5(g)(3); *see also*
 21 *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). To overcome that presumption, a
 22 party seeking to seal a judicial record must show “compelling reasons” to seal the record if it
 23 relates to a dispositive pleading. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180
 24 (9th Cir. 2006). Here, the exhibits contain Mr. Chilipe-Escandon's confidential and highly
 25 personal medical information. (Dkt. No. 25.) The Court FINDS that there is a compelling interest
 26 in maintaining the confidentiality of such records and that interest outweighs the public's interest

1 in their disclosure. *See Kamakana*, 447 F.3d at 1179. The Court therefore GRANTS the motion
2 to seal (Dkt. No. 24).

3 **B. Motion for Compassionate Release**

4 The Court may reduce a term of imprisonment under 18 U.S.C. § 3582(c)(1)(A) if
5 extraordinary and compelling reasons warrant such a reduction. When an inmate has health
6 conditions that make them significantly more vulnerable to complications from COVID-19, that
7 may constitute an extraordinary and compelling circumstance. *See United States v. Cosgrove*,
8 454 F. Supp. 3d 1063, 1067 (W.D. Wash. 2020); *United States v. Dorsey*, 461 F. Supp. 3d 1062,
9 1065 (W.D. Wash. 2020).

10 In this instance, however, Mr. Chilipe-Escandon has already finished serving his term of
11 imprisonment and has been released from custody. Since he is no longer in prison, continued
12 confinement in light of his heart condition cannot constitute an extraordinary and compelling
13 circumstance warranting a reduction in sentence, which moots his request for compassionate
14 release. *See Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (“If there is no longer a
15 possibility that [a movant] can obtain relief for his claim, that claim is moot . . .”) (quoting
16 *Ruvalcaba v. City of L.A.*, 167 F.3d 514, 521 (9th Cir.1999)); *United States v. Lisk*, 2020 WL
17 5434126, slip op. at 1 (D. Kan. 2020) (denying motion for compassionate release as moot where
18 defendant was already released from Bureau of Prisons custody (citing *Hirano v. United States*,
19 2020 WL 1861659, slip op. at 4 (D. Hawaii 2020); *Kyle v. United States*, 2020 WL 760396, slip
20 op. at 2 (N.D. W. Va. 2020))).

21 **III. CONCLUSION**

22 For the foregoing reasons, the Court GRANTS the Government’s motions (Dkt. Nos. 22,
23 24) and DENIES Defendant’s motion for compassionate release as MOOT. The Clerk is
24 respectfully DIRECTED to maintain Docket No. 25 under seal.

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1 DATED this 29th day of December 2020.
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John C. Coughenour

5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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